

N.D.A.G. Letter to Vogelpohl (Feb. 8, 1989)

February 8, 1989

Mr. Steven Vogelpohl
Lincoln City Attorney
P.O. Box 2575
Bismarck, ND 58502

Dear Mr. Vogelpohl:

Thank you for your January 4, 1989, letter in which you request a clarification of N.D.C.C. § 57-15-55.1 as it applies to the situation in which the city council did not budget or request a levy for the transportation of Public school students for a one-year period.

You specifically ask whether, as a result of not levying a tax which was authorized to be levied, the city council loses its ability to tax. If the city council does not lose its power to levy this tax, you ask whether the voters can compel a vote on the continuation of the tax levy through a city-wide special election.

We assume the approval of the tax levy for student transportation was a blanket approval rather than an approval only for specific years.

The statute in question is N.D.C.C. § 57-15-55.1 which provides as follows:

57-15-55.1. City tax levy for transportation of public school students. The governing body of any city, upon approval by a majority vote of the electors of the city at any citywide election, may annually levy a tax on the taxable valuation of property within the city to provide funds for fees charged by a school district pursuant to section 15-34.2-06.1 for transportation for public school students who reside in the city but who attend school in another city in the same school district. A city levying a tax pursuant to this section may levy only so much as will be required to provide an amount representing the difference between the estimated state transportation payment to be received by the school district on behalf of students residing in the city but attending school outside of the city and the estimated actual cost to be incurred by the district in providing transportation for those students.

(Emphasis supplied.) The statute literally states that the governing body of a city may annually levy a tax. Nowhere does the statute state that the tax must or shall be levied annually. Furthermore, we are unaware of any statute or general rule of law providing that a tax authority must be continually implemented in order to remain effective. Thus, in answer to your first question, a city council will not lose its power to levy a tax under this provision where the council chooses not to levy the tax for one fiscal year.

In light of the Legislature's failure to provide a method whereby the tax levy authority of N.D.C.C. § 57-15-55.1 may be withdrawn by the electorate, it can only be concluded that no such method is currently available. There are a number of tax statutes which specifically address the issue of discontinuing the city council's authority to make further levies. (See, e.g., N.D.C.C. §§ 57-15-44, 57-15-56, 57-15-57.) In answer to your second question, N.D.C.C. § 57-15-55.1 does not contain language providing for the discontinuance of the tax levy.

In summary, although the city council failed to make a school transportation tax levy for fiscal year 1989, the city council has not lost its authority to levy such a tax in the future. Unlike other tax statutes, N.D.C.C. § 57-15-55.1 does not set forth a method whereby a majority vote of the voters could discontinue the authority given the city council to make any further transportation levy.

I hope this information has been helpful.

Sincerely,

Nicholas J. Spaeth

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